

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Cellular Service and Other Commercial)
Mobile Radio Services in the Gulf of)
Mexico)
)
Amendment of Part 22 of the Commission's)
Rules to Provide for Filing and Processing)
of Applications for Unserved Areas in the)
Cellular Service and to Modify Other)
Cellular Rules)

WT Docket No. 97-112

CC Docket No. 90-6

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard" or "Company"), acting through counsel and in accordance with the Commission's Second Further Notice of Proposed Rulemaking in the captioned dockets,¹ hereby files its reply comments.

I. Background.

1. Vanguard is one of the largest independent providers of cellular radio telephone service in the United States. The Company currently operates twenty nine (29) nonwireline (i.e., Frequency Block A) cellular systems east of the Mississippi with a total of over 580,000 subscribers. Vanguard is the parent company of Western Florida Cellular Telephone Corp.

¹ Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, WT Docket No. 97-112; Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, Second Further Notice of Proposed Rulemaking, CC Docket No. 90-6, FCC 97-110, released April 16, 1997 (hereinafter, "SFNPRM").

("Western"), the nonwireline cellular licensee of the Pensacola, Florida and Ft. Walton Beach, Florida Metropolitan Statistical Areas ("MSA"), and, as such, has a direct and substantial interest in the instant proceeding.

2. As outlined in the Company's initial comments, Vanguard supports the Commission's proposal to divide the Gulf of Mexico Service Area ("GMSA") into a GMSA Exclusive Zone and a GMSA Coastal Zone, and the Commission's proposed boundary of twelve (12) nautical miles from the U.S. baseline as the scope of the Coastal Zone. Herein, Vanguard opposes additional proposals made by Petroleum Communications, Inc. ("PetroCom"), the nonwireline Gulf of Mexico cellular licensee, to the extent PetroCom's proposal exceeds the Commission's proposal and the requirements of the relevant D.C. Circuit decision.²

3. Vanguard opposes PetroCom's demand to further subdivide the Commission's proposed Coastal Zone into an Eastern and Western region. PetroCom's premise is that its recently reinstated application for Gulf service (which proposed expansion of Petrocom's CGSA to the eastern half of the Gulf of Mexico) would grant it exclusive rights to construct within the Eastern Coastal Zone. As a result PetroCom wants an additional three-year period to construct sites within the Eastern Coastal Zone. In addition, PetroCom and Bachow/Coastel, L.L.C. ("Coastel"), the wireline Gulf of Mexico licensee, want the unilateral right to construct land-based transmitters.

² Petroleum Communications, Inc. v. Federal Communications Commission, 22 F.3d 1164 (1994).

4. Vanguard opposes PetroCom's proposal for three reasons. First, the Commission's proposed "Exclusive Zone" defines the area within which Gulf licensees would be entitled to provide exclusive service. PetroCom's proposal impermissibly extends its exclusive right to provide service to the Coastal Zone, where Vanguard and other land-based licensees have already been providing service for many years. Second, the three-year time period is far longer than the time period associated with PetroCom's original Gulf of Mexico authorization. At most, PetroCom should be given one year to construct the technical proposal in its pending construction permit application, in the event such application is granted. If the Commission is inclined to grant Petrocom the right to construct within the Coastal Zone, the right should not include those areas currently receiving service from existing licensees or those areas in the Coastal Zone subject to pending unserved area applications. Third, Vanguard continues to oppose PetroCom and Coastel's proposal to allow Gulf licensees to place transmitters on land without the prior consent of land-based cellular licensees.

II. Vanguard Opposes A Three Year Extension Of Time For Petrocom To Construct In The Gulf Of Mexico Service Area

5. Vanguard opposes PetroCom's proposal that it receive exclusive rights to construct within the Eastern Coastal Zone for an additional three years. The D.C. Circuit's remand decision requires no such result. Rather, that Court said, "*given* the inability of Gulf licensees to place transmitters on land, Gulf service areas should not be frozen at their current dimensions."³ The Commission's proposed Exclusive Zone for Gulf of Mexico cellular licensees provides PetroCom the unfettered right to relocate its cell sites along with oil and gas platforms in vast areas of the East Gulf. Under the Commission's proposal, PetroCom will be able to keep

³ *Id.* at 1173.

its protected service area, despite the fact that reliable service will not be available within that area. The public interest is not harmed by lack of reliable service within the Exclusive Zone, because cellular service within the Gulf of Mexico is primarily used by the oil and gas industry.⁴

6. The situation in the Coastal Zone is decidedly different. In the Coastal Zone, reliable service is necessary to meet the needs of the public.⁵ The public interest favors preservation of existing cellular service, and rapid licensing of remaining coastal areas. PetroCom's proposal would condition every existing Service Area Boundary ("SAB") extension from land-based systems to operate on a "secondary" basis. Such a proposal would create uncertainty for land-based licensees and discourage additional investment in cellular service within the Coastal Zone, where Vanguard, for one, has already invested substantial sums. PetroCom's proposal will also further delay improvements to cellular within land-based systems. Land-based carriers, such as Vanguard, have had existing facilities serving the Coastal Zone. Moreover, they have had unserved area applications including other portions of the Gulf of Mexico service area pending for years. If Vanguard's pending applications were to be granted, cellular coverage within the Coastal Zone and within the Ft. Walton Beach and Pensacola cellular systems would be further expanded and improved, while leaving the Exclusive Zone to PetroCom. On the other hand, grant of an exclusive three-year period to PetroCom to provide coverage within the Coastal Zone would effectively preclude land-based carriers like Vanguard

⁴ Comments of Petroleum Communications, Inc. at 1 (hereinafter, "PetroCom Comments").

⁵ "[T]he boundary should be far enough from the shoreline to encompass the majority of coastal boat traffic, so that such traffic is capable of receiving reliable cellular service at all times. Therefore, those boats that wish to remain in constant contact with people on the shore (e.g., for safety or other reasons), could plan their itineraries in such a way that they stay within the designated Coastal Zone." *SFNPRM* at ¶ 30.

from implementing these long-delayed modifications to their systems. Since PetroCom's proposal to extend its exclusive right to construct in the Coastal Zone would relegate existing coastal cellular coverage to secondary status, and further delay provision of reliable cellular service within coastal waters, it is not in the public interest.

7. PetroCom's request for an additional three years to construct its Gulf of Mexico cellular system in the Coastal Zone, beyond the originally granted five-year buildout period, is not permissible.⁶ PetroCom filed an application to expand its CGSA one day prior to the expiration of its five-year buildout period. Its application, if granted, should authorize the same one-year construction period granted to all other cellular licensees.⁷ PetroCom tries to justify a three-year construction permit based on the fact that "three years is approximately the amount of time from the Court's remand." The argument is fallacious because Petrocom's five year buildout period, and related construction permit time period, were not running during those three years. The three-year delay did not shorten PetroCom's construction period; it cannot justify extending it. If PetroCom's construction permit application had been granted when filed, it would have had one year, rather than three, to construct additional cell sites. To extend PetroCom's buildout period would infringe on (indeed, divest) Vanguard and other land-based carriers' previously-established unserved area rights. If PetroCom needs additional time to construct

⁶ See, e.g., Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Service Rules, *First Report and Order and Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd 6185 (1991) ("We have previously considered and made a decision that the fill-in period would be for 5 years from the date a construction authorization is granted . . . We stated that this period allowed existing licensees and permittees the flexibility needed to construction and expand their systems . . . If existing licensees wish to further expand their CGSAs after the prescribed fill-in period, they may file unserved area applications.")

⁷ See 47 C.F.R. §22.946(b).

beyond its one-year construction permit, it can request an extension of time to construct, or file an unserved area application. If the Commission is inclined to adopt PetroCom's three-year construction proposal, it should at least confirm that land-based carriers' existing CGSA, as claimed through the System Information Update ("SIU") process when the five-year buildout period for the Gulf expired, is fully preserved.

III. Gulf Of Mexico Cellular Licensees Should Not Be Allowed To Construct Cell Sites On Land Without Consent Of The Land-Based Licensee

8. Vanguard reiterates its opposition to PetroCom's proposal to allow GMSA licensees to construct and operate land-based sites without consent from the land-based cellular licensee. The Commission has consistently rejected such a policy.⁸ Further, such a proposal would violate the established rights of existing land-based cellular licensees. The Commission has said "Section 22.911(d)(2)(i) expressly prohibits non-consensual contour extensions from one cellular system into the CGSA of another cellular system."⁹ Allowing Gulf of Mexico licensees to construct cell sites within a land-based licensees' market would infringe on the land-based carriers' rights against the capture of subscriber traffic within their market.¹⁰ The

⁸ See *SFNPRM* at ¶¶ 8-12 (reciting the history of the land-based transmitter controversy).

⁹ Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *Memorandum Opinion and Order On Reconsideration*, 8 FCC Rcd 1363 (1993) (hereinafter, "*Memorandum Opinion and Order*").

¹⁰ Amendment of Part 22 of the Commission's Rules to Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, *Further Memorandum Opinion and Order On Reconsideration*, 12 FCC Rcd 2109, 2132 (1997) "The first sentence of Section 22.911(d)(2)(i) states: 'Subscriber traffic is captured if an SAB of one cellular system overlaps the CGSA of another operating cellular system' (emphasis added). The new rule removes any suggestion of a presumption [that subscribers traffic is captured by an SAB extension] created by the prior rule."

Commission has also said that the rule prohibiting non-consensual contour extensions would simplify and expedite the cellular licensing process, noting

[I]n order to ensure uniformity and simplicity in administering our rules, and to prevent potentially endless litigation, we must rely on objective, rather than subjective standards for the protection of services. Section 22.911(d)(2)(i) provides a simple, objective standard to determine when capture occurs, and encourages parties to reach agreement on the resulting effects of SAB overlap.¹¹

9. PetroCom attempts to make its proposal more palatable by suggesting that the mutual consent process among licensees be supplanted by the Commission conditioning licenses so that signal strengths between systems are equal along the coastline.¹² The Commission considered and rejected a similar proposal in its unserved area proceeding. The Commission noted

Our goal with regard to cellular coverage is not to dictate a balancing of signal strengths along geopolitical boundaries, but rather to establish rules and policies that will lead to the efficient provision of nationwide seamless cellular service to the public. Further progress toward achievement of this goal will continue to depend in large part upon the success of informal negotiations between cellular licensees in determining mutually agreeable arrangements of facilities that provide an efficient juncture between adjacent systems.¹³

10. The Commission's policy has worked well for land-based licensees. To adopt a "signal strength" rule for GMSA and land-based licensees bordering the coast would result in the Commission becoming arbiter of signal strength disputes. More importantly, one of the two conditions that PetroCom proposes, that no subscriber traffic is captured from land-based transmitters, is virtually impossible to meet. As noted in Vanguard's initial comments, GMSA

¹¹ *Id.*, 12 FCC Rcd 2109, 2132 (¶ 47).

¹² PetroCom Comments at 13.

¹³ *Memorandum Opinion and Order* at 1367.

licensees cannot provide service to the Coastal Zone from land without causing interference to existing land-based systems. High land acquisition costs of coastal property, and prohibitions on commercial development in coastal areas would force GMSA licensees to locate sites several miles inland, thereby assuring interference. Since technical interference is foreordained, it should be left to licensees to negotiate a mutually acceptable agreement regarding the overlapping operation of their systems, or be free to decline to enter into such an agreement.

IV. Conclusion.

11. Vanguard supports the Commission's proposal to create an Exclusive Zone and Coastal Zone within the GMSA. Vanguard urges the Commission to reject PetroCom's comments that would, in effect, extend the Gulf of Mexico licensee's exclusive service area into the Coastal Zone for an additional three years. Reliable cellular service in the Coastal Zone is critical to safety and is in the public interest. The Commission should ensure such reliable service by allowing existing licensees to maintain their current service areas, and licensing remaining unserved areas within the Coastal Zone expeditiously.¹⁴ Therefore, the Commission should reject PetroCom's proposal that it receive for an additional three years the exclusive right to construct within the Coastal Zone. The Commission should also clarify that Gulf of Mexico

¹⁴ Vanguard noted in its initial comments that the Commission should incorporate previously-approved, *de minimis* extensions from land-based cellular licensees onto their CGSAs, retain the 32 dBu calculations for cell sites located on land, and process long-pending Phase II applications to serve the coastline under existing rules, in order to ensure reliable service within the Coastal Zone.

licensees are subject to the same service area boundary extension consent requirements as other cellular licensees, particularly for cell sites to be constructed in other licensees' markets.

Respectfully submitted,

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